

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-508-C - ORDER NO. 2000-561

JULY 10, 2000

IN	Application of International Exchange	)	ORDER GRANTING
RE:	Communications, Inc. and North American	)	MOTION FOR
	Telephone Network, L.L.C. for Approval of a	)	EXPEDITED REVIEW
	Proposed Asset Transfer Agreement.	)	AND APPROVING
		)	ASSET PURCHASE
		)	AGREEMENT

This matter comes before the Public Service Commission of South Carolina ("Commission") on the joint Application filed by International Exchange Communications, Inc. ("IE COM") and North American Telephone Network, L.L.C. ("NATN") (referred to collectively herein as "Applicants") requesting Commission approval of a proposed Asset Transfer Agreement. Applicants also request expedited review and disposition of the Application in order to allow the Applicants to consolidate their respective operations as soon as possible. The Application was filed pursuant to S.C. Code Ann. Section 58-9-310 (Supp. 1999) and the applicable regulations of the Commission.

IE COM is a Delaware corporation which is a wholly owned subsidiary of Pacific Gateway Exchange, Inc, a Delaware corporation which is publicly traded on the NASDAQ National Market. IE COM is a non-dominant carrier that provides domestic and international long distance service with its own facilities or through resale of purchased services from various facilities based carriers pursuant to the FCC's *Competitive Carrier* policies. IE COM is authorized by the FCC to offer domestic

interstate and international services in all fifty states and the District of Columbia as a non-dominant carrier. IE COM currently originates interstate traffic in fifty states. IE COM provides intrastate service, pursuant to certification, registration, or tariff requirements, or on an unregulated basis, in fifty states. IE COM is a certified interexchange carrier in the State of South Carolina having received its certification in Docket No. 98-668-C with Order No. 99-495, July 9, 1999.

NATN is a privately held Georgia limited liability corporation and is a non-dominant carrier that resells domestic and international long distance service from various facilities based carriers pursuant to the FCC's *Competitive Carrier* policies. NATN is authorized by the FCC to offer domestic interstate and international services in all fifty states and the District of Columbia as a non-dominant carrier. NATN currently originates interstate traffic in forty-eight states and provides intrastate service pursuant to certification, registration, or tariff requirements, or on an unregulated basis in forty-eight states. NATN is a certified interstate interexchange carrier in South Carolina having received its certification by Order No. 96-845 (December 5, 1996) in Docket No. 96-180-C.

Applicants propose a transaction which will accomplish the following:

- a. NATN shall sell, transfer and assign to IE COM all of NATN's right, title, and interest in and to NATN's assets, as defined in the Asset Purchase Agreement;
- b. In consideration for the above transfer and sale of assets, IE COM will pay to NATN the purchase price set forth in the Asset Purchase Agreement; and
- c. The assets to be purchased by IE COM include, to the extent permitted by this Commission, all of NATN's customer accounts.

By letter dated January 18, 2000, the Commission's Executive Director instructed the Applicants to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to provide notice of the Application to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. The Applicants filed Affidavits of Publication as proof that it had complied with the instructions of the Executive Director. No Petitions to Intervene, letters of protest, or comments were received by the Commission with regard to the instant Application.

#### **MOTION FOR EXPEDITED REVIEW**

As part of its Application, the Applicants requested expedited review and disposition of the Application in order that the Applicants could consolidate their respective operations as soon as possible. After the return date expired with no intervention or opposition, the Applicants reiterated their request for expedited review. Once the Applicants filed verified testimony to support the Application, the matter was brought to the Commission for consideration.

Upon consideration of the Applicants' request for expedited review, the Commission finds that expedited review should be granted. By their request, the Applicants waive their right to a formal hearing. The Commission finds that notice of the Application was properly afforded to the public and that no interested person sought to become a party to the proceeding. The Commission finds that procedural due process was afforded in this matter and further finds that the Applicants make a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context

of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony during the course of the Commission's regularly scheduled meeting with court reporter present as a hearing on this matter.

#### **EXAMINATION OF THE APPLICATION AND VERIFIED TESTIMONY**

By the Application, Applicants seek to transfer all of the customer accounts and related assets of NATN to IE COM, and IE COM will thereafter serve these customers pursuant to IE COM's certificate to operate in South Carolina. In support of the Application, Applicants filed the verified testimony of Sandra Grey, Chief Financial Officer/Vice President of Finance for IE COM.

According to the Application and the verified testimony of Ms Grey, IE COM is a Delaware corporation which is a wholly owned subsidiary of Pacific Gateway Exchange, Inc, a Delaware corporation which is publicly traded on the NASDAQ National Market. IE COM is a non-dominant carrier that provides domestic and international long distance service with its own facilities or through resale of purchased services from various facilities based carriers pursuant to the FCC's *Competitive Carrier* policies. IE COM is authorized by the FCC to offer domestic interstate and international services in all fifty states and the District of Columbia as a non-dominant carrier. IE COM currently originates interstate traffic in fifty states. IE COM provides intrastate service, pursuant to certification, registration, or tariff requirements, or on an unregulated basis, in fifty states. IE COM is a certified interexchange carrier in the State of South Carolina having received its certification in Docket No. 98-668-C with Order No. 99-495, July 9, 1999.

NATN is a privately held Georgia limited liability corporation and is a non-dominant carrier that resells domestic and international long distance service from various facilities based carriers pursuant to the FCC's *Competitive Carrier* policies. NATN is authorized by the FCC to offer domestic interstate and international services in all fifty states and the District of Columbia as a non-dominant carrier. NATN currently originates interstate traffic in forty-eight states and provides intrastate service pursuant to certification, registration, or tariff requirements, or on an unregulated basis in forty-eight states. NATN is a certified interstate interexchange carrier in South Carolina having received its certification by Order No. 96-845 (December 5, 1996) in Docket No. 96-180-C.

Under the Asset Purchase Agreement, NATN shall sell, transfer, and assign to IE COM all of NATN's present customer accounts and related assets. IE COM will notify by bill insert all current end users of NATN of the transfer. Further, according to the testimony of Ms. Grey, IE COM will amend its tariffs to include any rates to the extent that any present NATN rates are not included in IE COM's tariffs on file with the Commission. IE COM asserts that no customer of NATN will experience any change in rates due to the transaction and further asserts that the transaction should not cause any inconvenience or confusion to the customers of either NATN or IE COM. Upon review, it appears to the Commission that the transaction will be a seamless one for the customers of NATN that are being transferred to the services of IE COM.

The Applicants offer that the proposed transaction will serve the public interest by enabling IE COM to provide a streamlined level of service for all involved customers by

creating a single, larger provider of telecommunications services. The transaction will enhance the operating efficiencies, including market efficiencies, of IE COM. The transaction will increase the appeal to present and potential customers because of IE COM's larger size and greater variety of service offerings as well as enhance the ability of IE COM to appeal to and serve national accounts. Finally, the transaction will result in cost savings as the result of discounts on quantity ordering of materials and services.

Upon review and consideration of the Application, the verified testimony of Ms. Grey, and the applicable law, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. IE COM is a Delaware corporation which is a wholly owned subsidiary of Pacific Gateway Exchange, Inc, a Delaware corporation which is publicly traded on the NASDAQ National Market. IE COM is a non-dominant carrier that provides domestic and international long distance service with its own facilities or through resale of purchased services from various facilities based carriers pursuant to the FCC's *Competitive Carrier* policies. IE COM provides intrastate service, pursuant to certification, registration, or tariff requirements, or on an unregulated basis, in fifty states. IE COM is a certified interexchange carrier in the State of South Carolina having received its certification in Docket No. 98-668-C with Order No. 99-495, July 9, 1999.

2. NATN is a privately held Georgia limited liability corporation and is a non-dominant carrier that resells domestic and international long distance service from various facilities based carriers pursuant to the FCC's *Competitive Carrier* policies.

NATN currently originates interstate traffic in forty-eight states and provides intrastate service pursuant to certification, registration, or tariff requirements, or on an unregulated basis in forty-eight states. NATN is a certified interstate interexchange carrier in South Carolina having received its certification by Order No. 96-845 (December 5, 1996) in Docket No. 96-180-C.

3. IE COM and NATN have entered into an Asset Purchase Agreement whereby NATN has agreed to sell and IE COM has agreed to buy all of NATN's present customer accounts and related assets. IE Com will continue to service these customers pursuant to its authority granted by the Commission in Docket No. 98-668-C, Order No. 99-495, July 9, 1999.

4. Upon approval of the Asset Purchase Agreement, NATN will remain a viable corporation and will maintain its authority to operate in South Carolina as granted by the Commission by Order No. 96-845 (December 5, 1996) in Docket No. 96-180-C.

5. The Asset Transfer will be a seamless transaction where the customers subject to the transfer will not experience any change in rates. Further, IE COM will notify all affected customers of the transaction.

6. The transaction should produce economic efficiencies in operations and marketing and other benefits of size and scale which will hopefully produce tangible benefits for the customers of IE COM.

#### **CONCLUSIONS OF LAW**

1. IE COM is experienced in providing telecommunications services and desires to expand its operations in South Carolina and elsewhere.

2. Based on the above Findings of Fact, the Commission hereby determines that the Application filed by IE COM and NATN requesting Commission approval of a proposed Asset Transfer Agreement will not adversely affect the public interest, and therefore, the Commission approves the requested Asset Transfer.

IT IS THEREFORE ORDERED THAT:

1. The Application of IE COM and NATN for approval of an Asset Transfer Agreement is hereby approved.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)